

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RESIDENTIAL FUNDING
CORPORATION, et al.,

Appellants,

v.

HAL EDWIN BUETTNER, III, et al.,

Appellees.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, et al.,

Appellants,

v.

KEVIN RANDALL KRONE,

Appellee.

District Case No. 2:23-cv-02543-DJC
[master]

Bankr. Case No. 16-26531-C-13G

Bankr. Adversary Case No. 22-02015-C

District Case No. 2:23-cv-02544-DAD
[closed]

Bankr. Case No. 15-21528-A-13C

Bankr. Adversary Case No. 22-02038-C

ORDER

This appeal arises from consolidated bankruptcy adversary proceedings in which the Bankruptcy Court granted summary judgment in favor of Appellees on their claims that Appellants failed to properly reconvey void deeds of trust following Appellees' completion of their Chapter 13 bankruptcy plans and awarded Appellees attorneys' fees under California Civil Code section 1717. Appellants claim that the

1 Bankruptcy Court erred in awarding Appellees attorneys' fees under section 1717
 2 because they were not the prevailing parties in the adversary proceedings for the
 3 purposes of section 1717, and because California courts have held that section 1717
 4 is inapplicable to the fee provisions in the deeds of trust at issue here.

5 Having considered the Parties briefings, the Court agrees that California
 6 precedent precludes an award of attorneys' fees based on Civil Code section 1717 in
 7 this case. Accordingly, the Court will reverse the Bankruptcy Court's grant of summary
 8 judgment insofar as the Bankruptcy Court awarded attorneys' fees under that code
 9 section, and will remand this matter for further proceedings consistent with this order.

10 **BACKGROUND**

11 **I. The Bankruptcy Adversary Proceeding**

12 Appellees Hal Edwin Buettner, III and Michele Kay Elkins (the "Buettners") and
 13 Appellee Kevin Randall Krone ("Krone") (collectively, "Appellees") each allege that
 14 they applied for, and received, second mortgages on their homes in 2006. (Buettner
 15 Appellants' Opening Br. (ECF No. 11) at 1; Krone Appellants' Opening Br. (ECF No.
 16 17) at 1.) Appellees allege their secondary mortgages were evidenced by a note and
 17 deed of trust. (Buettner Appellants' Opening Br. at 1; Krone Appellants' Opening Br.
 18 at 1.) The Buettners and Krone subsequently filed for Chapter 13 bankruptcy in the
 19 U.S. District Court for the Eastern District of California in 2016 and 2015 respectively,
 20 thereafter completing payments under their bankruptcy plans and receiving a
 21 bankruptcy discharge on January 24, 2022, and February 8, 2021, respectively.
 22 (Buettner Appellants' Opening Br. at 2; Krone Appellants' Opening Br. at 1.)

23 The Buettners' and Krone's bankruptcy plans each provided that the deeds of
 24 trust securing their second mortgages would be deemed void, i.e., "stripped," at the
 25 completion of their plans and thereafter reconveyed to Appellees under the terms of
 26 the deeds.¹ (Am. Resp'ts' Br. (ECF No. 20) at 1; Buettner Appellants' Opening Br. at 2;

27 ¹ Wholly unsecured junior mortgages may be "stripped off" and rendered "void" in Chapter 13 cases by
 28 virtue of 11 U.S.C. §§ 506(d) and 1322(b)(2) once plan payments are complete.

1 Krone Appellants' Opening Br. at 1.) Accordingly, counsel for the Buettners and
2 Krone contacted their creditors at the completion of their plans to inform them of their
3 duty to reconvey the void deeds. (Am. Resp'ts' Br. at 1-2; Bankr. Ct. Op. (ECF No. 17-
4 1) at ER_0435-36.²)

5 After receiving no response, on March 4, 2022, the Buettners filed an adversary
6 complaint against Appellants Residential Funding Corporation, Ocwen Loan
7 Servicing, LLC, and PHH Mortgage Corporation (collectively, the "Buettner
8 Appellants") alleging their deed of trust was "stripped" upon completion of their
9 Chapter 13 plan, but that the Buettner Appellants failed to release the associated lien.
10 (Buettner Appellants' Opening Br. at 2.) In particular, the Buettners brought five
11 causes of actions for (1) declaratory relief concerning the validity and value of the
12 deed of trust; (2) extinguishment of the deed of trust; (3) violation of California Civil
13 Code section 2941(d); (4) breach of contract; and (5) attorneys' fees. (*Id.*; see also
14 Buettner Adversary Compl. (ECF No. 11-1) at ER0013-22.) Krone likewise received no
15 response from his creditors and filed an adversary complaint against Appellants
16 Deutsche Bank National Trust Company, Ocwen Loan Servicing, LLC, and PHH
17 Mortgage Corporation (collectively, the "Krone Appellants") on June 22, 2022,
18 alleging the same causes of action as the Buettners. (Krone Appellants' Opening Br.
19 at 2; see also Krone Adversary Compl. (ECF No. 17-1) at ER_0009-19.)

20 In response to these adversary complaints, PHH Mortgage Corporation
21 recorded a full reconveyance of the Buettners' deed of trust on March 23, 2022.
22 (Buettner Appellants' Opening Br. at 2; see also Buettner Reconveyance (ECF No. 11-
23 1) at ER0211.) PHH Mortgage Corporation also recorded a full reconveyance of
24 Krone's deed of trust on August 2, 2022. (Krone Appellants' Opening Br. at 2; see
25 also Krone Reconveyance (ECF No. 17-1) at ER_0068-69.) The Parties subsequently
26 discussed settling the adversary proceedings, as Appellants contended these

27
28 ² Citations to Appellants' Records refer to the page number in the Excerpts of Record, not original page numbers.

1 reconveyances mooted Appellees' claims, but no agreement was reached. (Buettner
2 Appellants' Opening Br. at 2; Krone Appellants' Opening Br. at 2.) The Buettners' and
3 Krone's adversary proceedings were consolidated on February 11, 2023, because of
4 their cases' similarities. (Buettner Appellants' Opening Br. at 2; Krone Appellants'
5 Opening Br. at 2.)

6 **II. The Bankruptcy Court's Order**

7 On December 2, 2022, the Buettner Appellants moved for summary judgment,
8 arguing the reconveyance mooted the Buettners' claims, the Buettners were not
9 entitled to attorneys' fees, and the Buettners failed to establish any damages.

10 (Buettner Appellants' Opening Br. at 2.) The Krone Appellants moved for summary
11 judgment on May 17, 2023, on the same basis. (Krone Appellants' Opening Br. at 2.)

12 On October 11, 2023, as amended October 17, 2023, the Bankruptcy Court
13 issued an opinion granting summary judgment in favor of the Buettners and Krone
14 and awarding them attorneys' fees. (Bankr. Ct. Op. at ER_0431-56.) Notably, the
15 Bankruptcy Court held that Appellees were the "prevailing parties" on their federal
16 causes of action for declaratory relief and extinguishment of their liens, and that
17 Appellees' actions qualified as "on the contract" for purposes of their demand for
18 attorneys' fees under California Civil Code section 1717, entitling Appellees to invoke
19 the attorneys' fee provisions in their underlying notes and deeds of trust. (*Id.* at
20 ER_0433.)

21 Specifically, concerning Appellees' claim for declaratory relief, the Bankruptcy
22 Court found that Appellees' deeds of trust were void because:

23 The values of the subject junior liens, effective on completion
24 of plan payments, were conclusively fixed as \$0.00 in the
25 plan confirmation orders. The values matured to \$0.00 and
26 became final upon completion of plan payments and the
27 filings of the Chapter 13 Trustee's Notice of Completed Plan
28 Payments. It follows that there is nothing left to declare
regarding value in a declaratory judgment. The only
remaining step is to clear the cloud on title by removing the
lien.

1 (*Id.* at ER_0447.)

2 Concerning Appellees' claim for extinguishment of the deeds of trust, the
3 Bankruptcy Court observed that Appellees' "lender[s], by virtue of the contractual
4 terms of the deeds of trust, ha[d] a contractual duty to request that the trustee
5 reconvey upon payment of all sums secured by the deeds of trust." (*Id.* at ER_0448 &
6 n.9 (citing Buettner Deed of Trust (ECF No. 11-1) at ER0175 (Section 20); Krone Deed
7 of Trust (ECF No. 17-1) at ER_0043 (Section 22)).) As the Bankruptcy Court explained:

8 Completion of chapter 13 plan payments on a plan in which
9 the subject debt has been valued by the court at \$0.00
10 satisfies the performance contingency inherent in the plan.
11 At that point, the debt, beyond cavil, is \$0.00. It follows that
12 all sums secured by the affected deeds of trust have been
13 paid . . . [and] [t]he lender thereupon has a federal duty to
14 request that the trustee reconvey the deed of trust on the
void debt. If voluntary reconveyance does not timely occur
following completion of chapter 13 plan payments, then the
debtor is entitled to invoke the federal lien removal power in
an adversary proceeding seeking involuntary reconveyance.

15 (*Id.* at ER_0448.) The Bankruptcy Court also noted that California imposes a statutory
16 duty to reconvey under California Civil Code section 2941. (*Id.*)

17 The Bankruptcy Court next considered whether Appellees could collect
18 attorneys' fees for their efforts to force reconveyance. The Bankruptcy Court found
19 that Appellees could under Civil Code section 1717(a), which provides:

20 In any action on a contract, where the contract specifically
21 provides that attorney's fees and costs, which are incurred to
22 enforce that contract, shall be awarded either to one of the
23 parties or to the prevailing party, then the party who is
24 determined to be the party prevailing on the contract,
whether he or she is the party specified in the contract or not,
shall be entitled to reasonable attorney's fees in addition to
25 other costs.

26 Applying this section, the Bankruptcy Court found that Appellees' adversary
27 proceedings to enforce the judicial determinations that their deeds of trust were void
28 and force reconveyance of the deeds qualified as "action[s] on a contract," and that

1 the Appellants reconveyance of the deeds of trust in response to Appellees filing their
2 adversary proceedings made Appellees the “prevailing parties” for the purposes of
3 section 1717. (*Id.* at ER_0452.) The Bankruptcy Court further found that the Buettners’
4 deed of trust provided for attorneys’ fees in Sections 7, 17, and 18, while Krone’s deed
5 of trust provided for attorneys’ fees in Sections 8, 18, and 21. (*Id.* at ER_0451 n.12; see
6 also Buettner Deed of Trust at ER0173-74; Krone Deed of Trust at ER_0039, ER_0041-
7 43.) The Bankruptcy Court also noted that Buettners’ and Krone’s notes likewise
8 contained attorneys’ fee provisions in Sections 10 and 6 respectively. (Bankr. Ct. Op.
9 at ER_0451 n.13; see also Buettner Note (ECF No. 11-1) at ER0165; Krone Note (ECF
10 No. 17-1) at ER_0028.) Accordingly, the Bankruptcy Court concluded that Appellees
11 were “entitled to attorneys’ fees and costs pursuant to the fee provisions in the
12 respective deeds of trust” under Civil Code section 1717. (Bankr. Ct. Op. at ER_0456.)

13 **III. The Pending Appeal**

14 Appellants appealed the Bankruptcy Court’s summary judgment order on
15 November 2, 2023. (Notice Appeal (ECF No. 1).) In short, Appellants argue that the
16 Bankruptcy Court erred in holding Appellees were entitled to attorneys’ fees under
17 Civil Code section 1717 because California courts have declined to apply section
18 1717 to attorneys’ fee provisions in similar deeds of trust. (Buettner Appellants’
19 Opening Br. at 4-12; Krone Appellants’ Opening Br. at 4-11.) Appellants also argue
20 that the Bankruptcy Court erred in holding Appellees were the prevailing parties for
21 the purposes of section 1717 because Appellants voluntarily released Appellees
22 deeds of trust at the outset of the adversary proceedings such that Appellees received
23 none of the relief sought on their actual contract claims (i.e., extinguishment and
24 damages) in the Bankruptcy Court’s final judgment. (Buettner Appellants’ Opening
25 Br. at 12-15; Krone Appellants’ Opening Br. at 11-13.) The appeals were submitted
26 without oral argument pursuant to the Parties’ request on March 12, 2024. (ECF No.
27 23.)

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ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in holding California Civil Code section 1717 applies to Appellees' notes and deeds of trust; and

2. Whether the Bankruptcy Court erred in holding the release of Appellees' deeds of trust rendered Appellees the prevailing parties for purposes of California Civil Code section 1717.

LEGAL STANDARD

A bankruptcy court's decision granting summary judgment is subject to de novo review. *See AFI Holding, Inc. v. Mackenzie (In re AFI Holding, Inc.)*, 525 F.3d 700, 702 (9th Cir. 2008). Under de novo review, district courts must "consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014). The district court "may affirm, modify, or reverse a bankruptcy's judge's judgment, order, or decree or remand with instructions for further proceedings." *Kelly v. J.A.W. Land & Trading, LLC (In re Kelly)*, 499 B.R. 844, 852-53 (S.D. Cal. 2013) (quoting former Fed. R. Bankr. P. 8013).

ANALYSIS

I. Whether Civil Code section 1717 Applies to the Attorneys' Fee Provisions in Appellees' Notes and Deeds of Trust

Appellants argue that the Bankruptcy Court erred in awarding Appellees attorneys' fees under Civil Code section 1717 because California precedent forecloses the application of section 1717 to Appellees' respective notes and deeds of trust. The Court agrees.

"Under the American Rule, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser[;] [t]his default rule can, of course, be overcome by statute." *Travelers Cas. and Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 448 (2007) (citations and quotations omitted). Under California law, unless an award of attorneys' fees is expressly permitted by statute, "the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express

1 or implied, of the parties.” Cal. Code Civ. Proc. § 1021. State law governs the
2 interpretation and application of a provision in a contract that permits an award of
3 attorneys’ fees. *Resolution Tr. Corp. v. Midwest Fed. Sav. Bank of Minot*, 36 F.3d 785,
4 800 (9th Cir. 1993).

5 In relevant part, California’s Civil Code provides:

6 In any action on a contract, where the contract specifically
7 provides that attorney’s fees and costs, which are incurred to
8 enforce that contract, shall be awarded either to one of the
9 parties or to the prevailing party, then the party who is
10 determined to be the party prevailing on the contract,
11 whether he or she is the party specified in the contract or not,
shall be entitled to reasonable attorney’s fees in addition to
other costs.

12 Civ. Code § 1717(a). “The primary purpose of section 1717 is to ensure mutuality of
13 remedy for attorney fee claims under contractual attorney fee provisions.” *Santisas v.*
14 *Goodin*, 17 Cal. 4th 599, 610 (1998). Otherwise stated, “[w]hen parties contractually
15 allocate attorneys’ fees, California Civil Code [section] 1717 ensures that such
16 attorneys’ fees provisions apply reciprocally such that if a party to an action would be
17 entitled to fees under the contract’s attorneys’ fees provision if successful, the adverse
18 party must also be eligible for fees if it prevails.” *Pac. Fuel Co., LLC v. Shell Oil Co.*,
19 416 F. App’x 607, 609 (9th Cir. 2011).

20 Three (sometimes four) conditions must be met before fees may be awarded
21 pursuant to section 1717(a). “First, the action in which the fees are incurred must be
22 an action ‘on a contract,’ a phrase that is liberally construed.” *Penrod v. AmeriCredit*
23 *Fin. Servs. (In re Penrod)*, 802 F.3d 1084, 1087 (9th Cir. 2015). “Under California law,
24 an action is ‘on a contract’ when a party seeks to enforce, or avoid enforcement of, the
25 provisions of the contract.” *Id.* at 1088. “Second, the contract must contain a
26 provision stating that attorney’s fees incurred to enforce the contract shall be awarded
27 either to one of the parties or to the prevailing party.” *Id.* at 1087. Third, the party
28 seeking fees must be the prevailing party. *Id.* at 1087-88. And fourth, where the

1 prevailing party is not the party specified in the contract, the party that is specified in
2 the contract would have been entitled to recover their fees had they prevailed. Civ.
3 Code § 1717(a).

4 Here, Appellants contend that the second condition is not met because “[t]he
5 California Court of Appeals has recognized Section 1717 does not apply to a standard
6 form deed of trust that merely allows a lender to incur reasonable attorneys’ fees to
7 protect its interest in the property or rights under the security instrument.” (Buettner
8 Appellants’ Opening Br. at 5; Krone Appellants’ Opening Br. at 5.) In particular,
9 Appellants rely on *Hart v. Clear Recon Corp.*, 27 Cal. App. 5th 322 (2018) and *Chacker*
10 *v. JPMorgan Chase Bank, N.A.*, 27 Cal. App. 5th 351 (2018), as modified on denial of
11 *reh’g* (Oct. 17, 2018). In *Chacker* and *Hart*, the courts considered whether a clause in
12 a deed of trust providing that any amount, including attorneys’ fees, disbursed by the
13 lender to protect their rights in the secured property or the deed “shall become
14 additional debt of Borrower secured by this Security Instrument” qualified as an
15 attorneys’ fee provision under section 1717(a). *Hart*, 27 Cal. App. 5th at 325-29;
16 *Chacker*, 27 Cal. App. 5th at 354-59. The courts concluded that they did not. As
17 reasoned in *Hart*,

18 [S]ection 1717 applies only where a “contract specifically
19 provides that attorney’s fees . . . shall be awarded” to one
20 party or the prevailing party. We must consider whether
21 paragraph 9 of the deed of trust specifically so provides. By
22 its plain language, it does not. The paragraph allows the
23 lender to take numerous actions, including incurring
24 attorney’s fees, to protect its interest. It then provides, in the
25 language we emphasized above, that “[a]ny amounts
26 disbursed by Lender under this Section 9 shall become
27 additional debt of Borrower secured by this Security
28 Instrument.” *This is not a provision that attorney’s fees “shall*
be awarded”; it is, instead, a provision that attorney’s fees,
like any other expenses the lender may incur to protect its
interest, will be added to the secured debt.

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1 27 Cal. App. 5th at 327 (emphasis added). Thus, the court held that the deed of trust
2 did not permit the “recover[y] of attorneys’ fees as an award pursuant to the instant
3 litigation.” *Id.*

4 The *Chacker* court reached a similar outcome, holding “[t]he Deed of Trust
5 Authorizes the Addition of Attorney Fees to the Loan Amount, Not a Separate Award
6 To Pay Fees.” 27 Cal. App. 5th at 356. *Chacker* also recognized that “multiple federal
7 district courts have held trust deed provisions similar or identical to those here do not
8 authorize a separate fee award and instead only allow the fees to be added to the
9 outstanding balance due under the promissory note.” *Id.* at 358 (citing *Dufour v.*
10 *Allen*, No. 14-cv-05616-CAS(SSx), 2017 WL 1433303, at *5-8 (C.D. Cal. Apr. 20, 2017);
11 *Barba v. Flagstar Bank FSB*, No. CV108023VBFVBKX, 2011 WL 13217562, at *1-2 (C.D.
12 Cal. Sept. 19, 2011); *Valencia v. Carrington Mortg. Servs., LLC*, No. CIV. 10-00558 LEK,
13 2013 WL 3223628, at *9-11 (D. Haw. June 25, 2013)).

14 Here, Appellees argue that their deeds of trust have unilateral attorneys’ fee
15 provisions which the Bankruptcy Court properly relied on when granting them
16 attorneys’ fees under Civil Code section 1717. (Am. Resp’ts’ Br. at 11-13.) In
17 particular, the Bankruptcy Court cited Sections 7, 17, and 18 in the Buettner’s deed of
18 trust, along with Sections 8, 18, and 21 in Krone’s deed of trust, as a basis for the
19 attorneys’ fee award. (Bankr. Ct. Op. at ER_0451 n.12.)

20 Having reviewed those sections, the Court finds that the most applicable
21 provisions appear in Section 7 of the Buettner’s deed of trust, and Section 8 of Krone’s
22 deed of trust, which permit lenders to recover attorneys’ fees from borrowers in the
23 event that the borrowers fail to perform any covenants contained in the deeds.
24 Assuming Civil Code section 1717 applied to make those fee provisions reciprocal,
25 Appellees (the borrowers) would likewise be able to recover attorneys’ fees from
26 Appellants (the lenders) for their breach of the covenants contained in the deeds of
27 trust, notably the covenants to reconvey contained in Section 20 of the Buettner’s
28

1 deed of trust and Section 22 of Krone's deed of trust. (See Buettner Deed of Trust at
2 ER0175; Krone Deed of Trust at ER_0043.)

3 However, these attorneys' fee provisions bear significant similarities to the
4 clauses at issue in *Chacker* and *Hart*. Notably, the Buettners' deed of trust states in
5 Section 7:

6 If Borrower fails to perform the covenants and agreements
7 contained in this Deed of Trust or if any action or proceeding
8 is commenced which materially affects Lender's interest in
9 the Property, then Lender, at Lender's option, upon notice to
10 Borrower, may make such appearances, *disburse such sums,*
11 *including reasonable attorneys' fees,* and take such action as
12 is necessary to protect Lender's interest *Any amounts*
disbursed by Lender pursuant to this paragraph 7, with
interest thereon, at the Note rate, shall become additional
indebtedness of Borrower secured by this Deed of Trust.

13 (Buettner Deed of Trust at ER0173 (emphasis added).)

14 Krone's deed of trust similarly provides in Section 8:

15 If (a) Borrower fails to perform the covenants and
16 agreements contained in this Security Instrument, (b) there is
17 a legal proceeding that might significantly affect Lender's
18 interest in the Property and/or rights under this Security
19 Instrument (such as a proceeding in bankruptcy, probate, for
20 condemnation or forfeiture, for enforcement of a lien which
21 has or may attain priority over this Security Instrument or to
22 enforce laws or regulations), or (c) Borrower has abandoned
23 the Property, then Lender may do and pay for whatever is
24 reasonable or appropriate to protect Lender's interest in the
25 Property and rights under this Security Instrument, including
26 protecting and/or assessing the value of the Property, and
27 securing and/or repairing the Property. Lender's actions can
28 include, but are not limited to: (a) paying any sums secured
by a lien which has or may attain priority over this Security
Instrument; (b) appearing in court; and (c) *paying reasonable*
attorneys' fees to protect its interest in the Property and/or
rights under this Security Instrument, including its secured
position in a bankruptcy proceeding *Any amounts*
disbursed by Lender under this Section 8 shall become
additional debt of Borrower secured by this Security
Instrument if allowed under Applicable Law.

1 (Krone Deed of Trust at ER_0039 (emphasis added).)

2 Much like the clauses in *Chacker* and *Hart*, the clauses here do not state that
3 attorneys' fees "shall be awarded" to either party. Rather, the clauses provide that the
4 fees and costs shall "become additional debt of Borrower" secured by the deeds of
5 trust. Thus, these clauses do not provide for a separate award of attorneys' fees, and
6 the Bankruptcy Court erred in awarding attorneys' fees under section 1717(a) based
7 on these provisions.

8 Sections 17 and 18 in the Buettner's deed of trust and Sections 18 and 21 in
9 Krone's deed of trust similarly do not support an award of attorneys' fees here. Those
10 sections govern the lender's right to accelerate payment of the sums secured by the
11 deed of trust and foreclose on the secured property in the event of the borrower's
12 breach of their covenants under the deed, and provide that the lender may "collect all
13 reasonable costs and expenses incurred in pursuing" acceleration and sale of the
14 property, including reasonable attorneys' fees. (See Buettner Deed of Trust at
15 ER0174; Krone Deed of Trust at ER_0041-43.) Those sections also provide that if the
16 lender invokes the power of sale and the property is sold, the trustee shall apply sale
17 proceeds first to sale expenses, "including, but not limited to, reasonable Trustee's
18 and attorneys' fees." (See Buettner Deed of Trust at ER0174; Krone Deed of Trust at
19 ER_0043.) Much like Sections 7 and 8 discussed above, these sections do not
20 authorize an award of attorneys' fees to the prevailing party in a lawsuit. Rather, they
21 authorize lenders to "collect" attorneys' fees in connection with a foreclosure and
22 provide a method for collecting them, by applying the proceeds of the trustee's sale.
23 These provisions are also inapplicable to the relief sought by Appellees in their
24 adversary proceeding, as Appellees do not contest the payment of any sums under
25 the deeds of trust but rather seek reconveyance of the deeds. Thus, the Bankruptcy
26 Court erred in awarding attorneys' fees under those provisions.

27 Finally, while Section 10 in Buettner's note and Section 6 in Krone's note also
28 contain attorneys' fee provisions, those sections are likewise inapplicable, as they

1 provide that the note holder may seek repayment of attorneys' fees spent in enforcing
2 the note. (See Buettner Note at ER0165; Krone Note at ER_0028.) Appellees here
3 seek to enforce the terms of their deeds of trust, not their notes. Thus, the Bankruptcy
4 Court erred in awarding attorneys' fees based on those note provisions.

5 Appellees cite several cases in support of their argument that the Bankruptcy
6 Court correctly awarded fees here as bankruptcy courts have previously awarded
7 attorneys' fees under Civil Code section 1717 in similar federal lien removal cases.
8 (See Am. Resp'ts' Br. at 10 (citing *Blendheim v. Note Holder (In re Blendheim)*, No. 09-
9 10283-MLB, 2016 WL 4264058 (Bankr. W.D. Wash. Aug. 11, 2016); *Luchini v.*
10 *JPMorgan Chase Bank, N.A. (In re Luchini)*, 511 B.R. 664 (Bankr. E.D. Cal. 2014); *Martin*
11 *v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013).) These
12 cases are inapposite. *Blendheim*, for its part, applied Washington State's reciprocal
13 attorneys' fee statute and is thus largely irrelevant to this Court's consideration of
14 California law. See 2016 WL 4264058, at *4-6, 13. *Martin* and *Luchini*, meanwhile,
15 granted attorneys' fees under Civil Code section 1717 without analyzing whether
16 application of that code section was correct, and so are unhelpful here. See *Luchini*,
17 511 B.R. at 679-81; *Martin*, 491 B.R. at 130. Those cases also pre-date *Chacker* and
18 *Hart*. Thus, to the extent *Martin* and *Luchini* conflict with *Chacker* and *Hart*, this Court
19 is required to follow the more recent decisions of the California Court of Appeals.
20 *Spear v. Wells Fargo Bank, N.A. (In re Bartoni-Corsi Produce, Inc.)*, 130 F.3d 857, 861
21 (9th Cir. 1997) ("When interpreting state law, federal courts are bound by decisions of
22 the state's highest court" unless there is no relevant decision by the state's highest
23 court, in which case federal courts are "obligated to follow the decisions of the state's
24 intermediate appellate courts" unless there is "convincing evidence that the state
25 supreme court would decide differently." (quoting *Lewis v. Tel. Emps. Credit Union*, 87
26 F.3d 1537, 1545 (9th Cir. 1996)).)

27 In sum, the Court holds that the Bankruptcy Court erred in awarding Appellees
28 attorneys' fees under Civil Code section 1717 as no clause in the deeds of trust or

notes at issue here provide that attorneys' fees "shall be awarded" for the relief sought by Appellees, i.e., enforcement of their contractual right to reconveyance. Thus, the Court will overturn the Bankruptcy Court's summary judgment ruling on this point.

II. Whether Appellees Were the Prevailing Parties in the Bankruptcy Adversary Proceeding for the Purposes of Civil Code section 1717

As discussed above, the Bankruptcy Court erred in granting Appellees attorneys' fees under Civil Code section 1717 because the applicable attorneys' fee provisions do not "award" attorneys' fees as required under the plain language of section 1717. Thus, the Court need not reach the question of whether Appellees were the prevailing parties for the purposes of section 1717.

CONCLUSION

For the reasons set forth above, the Court hereby:

1. REVERSES the Bankruptcy Court's grant of summary judgment in favor of Appellees on the award of attorneys' fees under California Civil Code section 1717;
2. REMANDS this matter to the Bankruptcy Court for further proceedings consistent with this order; and
3. DIRECTS the Clerk of Court to close this case.

IT IS SO ORDERED.

Dated: **August 27, 2025**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

DJC4 - Buettner23cv2543.BankrAppeal